



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0598; FRL-9986-76-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland;
Regional Haze Five-Year Progress Report**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Maryland's regional haze progress report, submitted on August 9, 2017, as a revision to its State Implementation Plan (SIP). Maryland's SIP revision addresses Clean Air Act (CAA) provisions and EPA regulations that require each state to submit periodic reports describing the State's progress towards reasonable progress goals (RPGs) established for regional haze and to make a determination of the adequacy of the State's existing regional haze SIP. The EPA is approving Maryland's determination that the State's regional haze SIP is adequate to meet the RPGs for the first implementation period.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0598. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Erin Trouba, (215) 814-2023, or by e-mail at trouba.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule, each state was required to submit to EPA an implementation plan addressing regional haze visibility impairment for the first implementation period through 2018, and then was required to submit a progress report in the form of a SIP revision that evaluates progress towards the RPGs set for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze SIP. 40 CFR 51.308(h). The first progress report SIP is due five years after submittal of the initial regional haze SIP.

On February 13, 2012, Maryland submitted the State’s first regional haze SIP in accordance with the requirements of 40 CFR 51.308. The progress report SIP was submitted by Maryland, through the Maryland Department of the Environment (MDE), on August 9, 2017. On August 27, 2018 (83 FR 43571), EPA published a notice of proposed rulemaking (NPRM) in which EPA

proposed approval of Maryland's regional haze 5-year progress report SIP, a report on progress made in the first implementation period towards RPGs for Class I areas outside the State that are affected by emissions from Maryland's sources. Because there are no Class I areas in Maryland, the State did not need to address progress towards RPGs for Class I areas "inside" the State. This progress report SIP also included the State's determination that its existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018.

II. Summary of SIP Revision and EPA Analysis

Maryland's regional haze 5-year progress report SIP submittal (2017 Progress Report) addresses the required elements for progress reports under the provisions of 40 CFR 51.308(g) and includes a determination that the State's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018 as required by 40 CFR 51.308(h).

In the NPRM, EPA proposed to approve the 2017 Progress Report because EPA found that the 2017 Progress Report addressed the elements of 40 CFR 51.308(g) regarding progress implementing the approved regional haze SIP and discussed visibility improvement in Class I areas impacted by Maryland's emissions. The detailed rationale for EPA's action is explained in the NPRM and will not be restated here. In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report submission, a determination of the adequacy of their existing regional haze SIP. In the 2017 Progress Report, Maryland declared that its existing regional haze SIP required no substantive revision to achieve the RPGs for Class I areas. As explained in detail in the NPRM, EPA concluded Maryland adequately addressed 40

CFR 51.308(h) because decreasing emissions of visibility impairing pollutants and progress of regional Class I areas towards RPGs for 2018 indicate that no further revisions to Maryland's SIP are necessary for this first regional haze implementation period. Therefore, EPA concluded the 2017 Progress Report met the requirements of 40 CFR 51.308(h).

III. Summary of Public Comments and EPA's Response

One public comment was received on the NPRM. A summary of the comment and EPA's response are provided in this section. The comment is provided in the docket for this final rulemaking action.

Comment: The commenter stated Maryland's plan does not adequately address regional haze progress, alleged that the State's electric generating units (EGUs) did not reduce sulfur dioxide (SO₂) emissions by ninety percent (90%), and alleged a pulp mill and EGU in Maryland continue to emit large amounts of SO₂. The commenter stated Maryland's BART (Best Available Retrofit Technology) determinations were and continue to be inadequate. The commenter stated Maryland's sulfur fuel oil limits are not low and asked EPA to compare Maryland's limits to other states.

Response: EPA reviewed Maryland's 2017 Progress Report against the requirements for progress reports in 40 CFR 51.308(g) and (h). EPA found the 2017 Progress Report evaluated progress towards the RPGs and determined that the existing Maryland regional haze SIP is adequate to meet those RPGs because the 2017 Progress Report showed decreasing emissions of visibility impairing pollutants and significant progress of regional Class I areas to meeting or exceeding RPGs for 2018. Maryland's 2017 Progress Report documented emission reductions from point source, non-road, on-road, and area source sectors. Thus, EPA agreed with

Maryland's determination that no further revisions to Maryland's SIP are necessary for this first regional haze implementation period

40 CFR 51.308(g)(1) requires progress reports to contain a description of the status of implementation of all measures included in the implementation plan for achieving RPGs for Class I areas. One implementation measure that is required to be described in the progress report is the implementation of BART. As stated in the NPRM and in the 2017 Progress Report, Maryland discussed the implementation of BART at EGUs and at Holcim Cement and Luke Pulp and Paper Mill. The adequacy of these measures as BART was determined by EPA when EPA approved the Maryland regional haze SIP in 2012. 77 FR 39938 (July 6, 2012). Nothing in the CAA or in 40 CFR 51.308(g) or (h) requires Maryland or EPA to reexamine the BART determinations when reviewing a progress report.

In addition, in the 2017 Progress Report, Maryland addressed the implementation of the Healthy Air Act (HAA) which was a measure employed by Maryland for its regional haze SIP to achieve a 90% reduction of SO₂ from coal-fired EGUs within the State to address RPGs for Class I areas impacted by Maryland and to address BART for those eligible EGUs. For a discussion of the HAA as the approved BART-alternative for EGUs in Maryland, see EPA's approval of the Maryland regional haze SIP at 77 FR 39938. In the 2017 Progress Report, Maryland included SO₂ emissions data for EGUs demonstrating reductions from the HAA as well as from other SO₂ reducing regulations. Therefore, as a factual matter, EPA disagrees with the commenter that Maryland did not reduce SO₂ emissions by 90% from EGUs to meet the regional haze SIP measures. Maryland also discussed the implementation of BART within the State and thus met requirements for progress reports in 40 CFR 51.308. The commenter provided no information

that Maryland had not implemented BART as approved by EPA.¹

Regarding the commenter's concern about fuel sulfur limits, EPA addressed Maryland's fuel sulfur requirements in the approval of Maryland's regional haze SIP. As EPA stated when proposing to approve Maryland's regional haze SIP, since Maryland has not adopted a low sulfur fuel oil strategy, the State has a deficiency of 7,473.4 tons per year (tpy) of SO₂ emissions. However, Maryland has a surplus of SO₂ emission reductions of 57,552 tpy resulting from the HAA. This surplus accounts for the SO₂ emission reductions needed to meet the requirements of the low sulfur fuel strategy. 77 FR 11827, 11835 (Feb. 28, 2012). As EPA approved Maryland's regional haze SIP without Maryland having a low sulfur fuel strategy as a measure for its SIP, whether or not Maryland has such a strategy now implemented, and whether any sulfur fuel requirements Maryland has are less stringent than other states, are not relevant or appropriate considerations before EPA in evaluating the 2017 Progress Report. 40 CFR 51.308(g) relates to discussion of the implementation of measures approved into a state's regional haze SIP. Thus, the 2017 Progress Report did not need to address any sulfur fuel requirements as those are not part of the Maryland regional haze SIP. As EPA found Maryland addressed its progress towards meeting RPGs in Class I areas impacted by Maryland emissions and addressed visibility improvement from measures in the Maryland SIP, EPA is approving the 2017 Progress Report as addressing 40 CFR 51.308(g).

IV. Final Action

¹ In June 2012, EPA approved BART emission limits for power boiler 25, a BART subject source, at the Verso Luke Paper Mill. 77 FR 39938 (June 13, 2012). In July 2017, EPA removed the previously approved BART requirements for SO₂ and nitrogen oxides (NO_x) from power boiler 25 (No. 25) and replaced them with new, alternative emission requirements as BART. EPA established an annual SO₂ cap for power boiler 25 and approved alternative BART emission limits for SO₂ and NO_x for power boiler 24 (No. 24). 82 FR 35451 (July 31, 2017).

EPA is approving Maryland's 2017 Progress Report submitted on August 9, 2017, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h) as well as CAA section 110 requirements for SIPs.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland's regional haze 5-year progress report SIP revision may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 13, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V--Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for “Regional Haze Five-Year Progress Report” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *		
Regional Haze Five-Year Progress Report	Statewide	8/09/2017	<u>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</u>	

[FR Doc. 2018-25556 Filed: 11/23/2018 8:45 am; Publication Date: 11/26/2018]